INDIANA STATE TEACHERS' RETIREMENT FUND:
Teachers retiring and later resuming teaching, not having made an election as to benefits, are entitled to annuities during such period of retirement.

February 17, 1944.

Opinion No. 16

Mr. Robert B. Hougham,
Executive Secretary,
Indiana State Teachers’
Retirement Fund Board,
334 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of January 24, 1944, received as follows:

“The question has arisen as to the eligibility of a teacher to annuity for a period not taught after the said teacher returns to employment. We have the case of Mr. Roscoe C. Miller, who ceased teaching in the public schools of Indiana at the end of the school year 1932-33 and did not teach again until the beginning of the school year 1943-44 and who did not during his period of non-teaching make application for annuity benefits to which he was entitled by virtue of having had twenty-eight years of service in Indiana.

“Can he now make application and be paid by the Retirement Fund Board for those years between 1933 and 1943, in which he was not employed in Indiana, notwithstanding the fact that he returned to service in the public schools of this state before making application for annuity?”

I wish to advise this teacher's rights are controlled by the provisions of Section 8, Chapter 256, Acts of 1921, same being Section 28-4511, Burns 1933.

While the foregoing statute was amended by Chapter 28 of the Acts of 1939, same being Section 28-4512, Burns' 1943 Supplement, giving additional benefits to teachers who elected, on or before December 31, 1942, to accept the terms of said amended statute, same would not apply to the instant case as no such election was made.
Section 28-4511, Burns’ 1933, supra, under Clauses 1 and 2 of the proviso, is in part as follows:

"1. In case of retirement before thirty-five (35) years of service, the annuity granted shall be based upon the then cash value of the actual payments made by the teacher, with four (4) per cent compound interest.

"2. In case of withdrawal, the amount paid in under this act before amendment shall be refunded, under the terms of the act before amendment, but the amount paid in under the act as amended shall be returned under terms of the act as amended.

"Any person coming under the provisions of this act who shall have rendered forty (40) years or more teaching service in the public schools of the state and shall have attained the age of sixty (60) years, who ceases to be in the employ of the public schools of the state, for any cause, shall be entitled to an annuity of seven hundred dollars (§700), payable in four (4) installments on the tenth day of January, April, July and October, and terminating with the last payment made prior to the death of the annuitant.

"Any person who shall have taught twenty-five (25) years or more in the public schools and who ceases to be in the employ of the public schools of the state, for any cause, may, in lieu of any other benefit, be entitled to an annuity payable as above, of such an amount as the then present value of the annuity which would otherwise have ultimately been available, computed on the actuarial basis provided for, will purchase at such teacher’s age of retirement, based upon actuarial tables made a part of this law or as so later adopted by the board of trustees."

The foregoing statute gives a teacher retiring after twenty-five years of service a right to elect to receive either an annuity or a withdrawal of the funds paid in. The statute does not designate any time within which such election must be made. If the teacher withdraws all of such funds and then later returns to teaching in this State, said statute provides that such funds so withdrawn shall be returned. The statute
does not require a teacher who has retired and is being paid an annuity to return the amount received in annuities upon being reemployed as a teacher.

It is, therefore, apparent that had this teacher, upon retiring in 1933, elected to accept annuities from such fund and then in 1942 accepted employment as a teacher, he would not have been required to return any of the annuities so made to him.

It is common knowledge that many teachers, under the present war conditions, who have retired and have been receiving annuity benefits, have returned to teaching without being penalized by reason of having received such annuities.

This teacher’s right to such annuities became vested in him on his retirement, subject to an election to be thereafter made by him, and are controlled by the statute under which such retirement fund was established. The statute is deemed a part of said retirement plan and in this respect is analogous to a teacher’s rights under his teaching contract. It has been held the statute becomes a part of such teacher’s contract.


In 1937 Opinions of Attorney General, page 574 at 577, it was held the liabilities of the fund to a teacher were fixed as of the date of retirement, under the law existing, at the time of such retirement, and not by the later amendment of 1937.

I am therefore of the opinion he is entitled to be paid the annuities due him during the period of his retirement. Any other construction of said Act would result in a discrimination against this teacher, and in favor of those teachers who had retired and thereafter received their annuities, and subsequently elected to resume their teaching career. I am therefore of the opinion that your question should be answered in the affirmative.